

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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WYKESHIA ALLEN,

Plaintiff,

**13-CV-2363
(LDW) (AKT)**

-against-

COUNTY OF NASSAU and NASSAU
COUNTY POLICE OFFICERS JOHN
DOES #1-5, (the names John Doe being
fictitious, as the true names are presently
unknown).

**COUNTY DEFENDANT'S
ANSWER TO
PLAINTIFF'S
COMPLAINT**

Defendants.

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Defendant County of Nassau (hereinafter referred to as the "Defendant"), by its attorney, John Ciampoli, Nassau County Attorney, by Richard J. Femia, Deputy County Attorney, Answers Plaintiff's Complaint, upon information and belief, as follows:

1. Deny the allegations set forth in paragraph "1" of the Complaint and respectfully refer all questions of law to the Court.
2. Deny the allegations set forth in paragraph "2" of the Complaint and respectfully refer all questions of law to the Court.
3. Deny the allegations set forth in paragraph "3" of the Complaint and respectfully refer all questions of law to the Court.
4. Deny the allegations set forth in paragraph "4" of the Complaint and respectfully refer all questions of law to the Court.
5. Deny the allegations set forth in paragraph "5" of the Complaint and respectfully refer all questions of law to the Court.
6. Deny the allegations set forth in paragraph "6" of the Complaint, except aver, that a document purporting to be a Notice of Claim was received on March 14, 2013 and respectfully refer all questions of law to the Court.

7. Deny the allegations set forth in paragraph “7” of the Complaint and respectfully refer all questions of law to the Court.

8. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “8” of the Complaint.

9. Deny the allegations set forth in paragraph “9” of the Complaint, except aver, that Nassau County was and is a municipal corporation.

10. Deny the allegations set forth in paragraph “10” of the Complaint and respectfully refer all questions of law to the Court

11. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “11” of the Complaint.

12. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “12” of the Complaint.

13. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “13” of the Complaint.

14. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “14” of the Complaint.

15. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “15” of the Complaint.

16. Deny the allegations set forth in paragraph “16” of the Complaint.

17. Deny the allegations set forth in paragraph “17” of the Complaint.

18. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “18” of the Complaint.

19. Deny the allegations set forth in paragraph “19” of the Complaint.

20. Deny the allegations set forth in paragraph “20” of the Complaint.
21. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “21” of the Complaint.
22. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “22” of the Complaint.
23. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “23” of the Complaint.
24. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “24” of the Complaint.
25. Deny the allegations set forth in paragraph “25” of the Complaint.
26. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “26” of the Complaint.
27. Deny the allegations set forth in paragraph “27” of the Complaint.
28. Deny the allegations set forth in paragraph “28” of the Complaint.
29. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “29” of the Complaint.
30. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “30” of the Complaint.
31. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “31” of the Complaint.
32. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “32” of the Complaint.

33. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “33”of the Complaint.

34. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “34”of the Complaint.

35. Deny the allegations set forth in paragraph “35”of the Complaint.

36. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “36”of the Complaint.

37. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “37”of the Complaint.

38. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “38”of the Complaint.

39. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “39”of the Complaint.

40. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “40”of the Complaint.

41. Deny the allegations set forth in paragraph “41”of the Complaint.

42. Deny the allegations set forth in paragraph “42”of the Complaint.

43. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “43”of the Complaint.

44. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “44”of the Complaint.

45. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “45”of the Complaint.

46. Deny the allegations set forth in paragraph "46" of the Complaint.

AS AND FOR AN ANSWER TO SECTION: FIRST CAUSE OF ACTION
42 U.S.C. §1983 - FALSE ARREST

47. Answering paragraph "47" of the Complaint, Defendant repeats and reavers each and every response herein to paragraphs "1" through "46" of the Complaint as though fully set forth herein.

48. Deny the allegations set forth in paragraph "48" of the Complaint.

49. Deny the allegations set forth in paragraph "49" of the Complaint.

50. Deny the allegations set forth in paragraph "50" of the Complaint.

51. Deny the allegations set forth in paragraph "51" of the Complaint.

52. Deny the allegations set forth in paragraph "52" of the Complaint.

53. Deny the allegations set forth in paragraph "53" of the Complaint.

54. Deny the allegations set forth in paragraph "54" of the Complaint.

55. Deny the allegations set forth in paragraph "55" of the Complaint.

AS AND FOR AN ANSWER TO SECTION: SECOND CAUSE OF ACTION
42 U.S.C. §1983 – FALSE IMPRISONMENT

56. Answering paragraph "56" of the Complaint, Defendant repeats and reavers each and every response herein to paragraphs "1" through "55" of the Complaint as though fully set forth herein.

57. Deny the allegations set forth in paragraph "57" of the Complaint.

58. Deny the allegations set forth in paragraph "58" of the Complaint.

59. Deny the allegations set forth in paragraph "59" of the Complaint.

60. Deny the allegations set forth in paragraph "60" of the Complaint.

61. Deny the allegations set forth in paragraph "61" of the Complaint.

62. Deny the allegations set forth in paragraph “62” of the Complaint.
63. Deny the allegations set forth in paragraph “63” of the Complaint.
64. Deny the allegations set forth in paragraph “64” of the Complaint.
65. Deny the allegations set forth in paragraph “65” of the Complaint.

AS AND FOR AN ANSWER TO SECTION: THIRD CAUSE OF ACTION
42 U.S.C. §1983 – UNREASONABLE SEARCH AND SEIZURE CLAIM

66. Answering paragraph “66” of the Complaint, Defendant repeats and reavers each and every response herein to paragraphs “1” through “65” of the Complaint as though fully set forth herein.
67. Deny the allegations set forth in paragraph “67” of the Complaint.
68. Deny the allegations set forth in paragraph “68” of the Complaint.
69. Deny the allegations set forth in paragraph “69” of the Complaint.
70. Deny the allegations set forth in paragraph “70” of the Complaint.

AS AND FOR AN ANSWER TO SECTION: FOURTH CAUSE OF ACTION
442 U.S.C. §1983 – MUNICIPAL LIABILITY

71. Answering paragraph “71” of the Complaint, Defendant repeats and reavers each and every response herein to paragraphs “1” through “70” of the Complaint as though fully set forth herein.

72. Deny the allegations set forth in paragraph “72” of the Complaint.
73. Deny the allegations set forth in paragraph “73” of the Complaint.
74. Deny the allegations set forth in paragraph “74” of the Complaint.
75. Deny the allegations set forth in paragraph “74-a” of the Complaint.
76. Deny the allegations set forth in paragraph “74-b” of the Complaint.
77. Deny the allegations set forth in paragraph “74-c” of the Complaint.

78. Deny the allegations set forth in paragraph “74-d” of the Complaint.
79. Deny the allegations set forth in paragraph “74-e” of the Complaint.
80. Deny the allegations set forth in paragraph “74-f” of the Complaint.
81. Deny the allegations set forth in paragraph “75” of the Complaint.
82. Deny the allegations set forth in paragraph “76” of the Complaint.
83. Deny the allegations set forth in paragraph “77” of the Complaint.
84. Deny the allegations set forth in paragraph “78” of the Complaint.
85. Deny the allegations set forth in paragraph “79” of the Complaint.

**AS AND FOR AN ANSWER TO SECTION: FIFTH CAUSE OF ACTION
42 U.S.C. §1983 – ABUSE OF PROCESS/MALICIOUS PROSECUTION**

86. Answering paragraph “80” of the Complaint, Defendant repeats and reavers each and every response herein to paragraphs “1” through “79” of the Complaint as though fully set forth herein.

87. Deny the allegations set forth in paragraph “81” of the Complaint.
88. Deny the allegations set forth in paragraph “82” of the Complaint.
89. Deny the allegations set forth in paragraph “83” of the Complaint.
90. Deny the allegations set forth in paragraph “84” of the Complaint.
91. Deny the allegations set forth in paragraph “85” of the Complaint.
92. Deny the allegations set forth in paragraph “86” of the Complaint.
93. Deny the allegations set forth in paragraph “87” of the Complaint.
94. Deny the allegations set forth in paragraph “88” of the Complaint.

**AS AND FOR AN ANSWER TO SECTION: SIXTH CAUSE OF ACTION
INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**

95. Answering paragraph "89" of the Complaint, Defendant repeats and reavers each and every response herein to paragraphs "1" through "88" of the Complaint as though fully set forth herein.

96. Deny the allegations set forth in paragraph "90" of the Complaint.

97. Deny the allegations set forth in paragraph "91" of the Complaint.

98. Deny the allegations set forth in paragraph "92" of the Complaint.

99. Deny the allegations set forth in paragraph "93" of the Complaint.

100. Deny the allegations set forth in paragraph "94" of the Complaint.

**AS AND FOR AN ANSWER TO SECTION: SEVENTH CAUSE OF ACTION
ASSAULT UNDER PENDANT JURISDICTION AGAINST P.O. JOHN DOEs #1-5
AS AND FOR AN ANSWER TO SECTION: WHEREFORE**

101. Answering paragraph "95" of the Complaint, Defendant repeats and reavers each and every response herein to paragraphs "1" through "94" of the Complaint as though fully set forth herein.

102. Deny the allegations set forth in paragraph "96" of the Complaint.

103. Deny the allegations set forth in paragraph "97" of the Complaint.

104. Deny the allegations set forth in paragraph "98" of the Complaint.

105. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "99" of the Complaint.

106. Deny the allegations set forth in paragraph "100" of the Complaint.

107. Deny the allegations set forth in paragraph "101" of the Complaint.

108. Deny the allegations set forth in paragraph "102" of the Complaint.

**AS AND FOR AN ANSWER TO SECTION: EIGHTH CAUSE OF ACTION
UNLAWFUL IMPRISONMENT UNDER PENDANT JURISDICTION AGAINST
ALL DEFENDANTS**

109. Answering paragraph “103” of the Complaint, Defendant repeats and reavers each and every response herein to paragraphs “1” through “102” of the Complaint as though fully set forth herein.

110. Deny the allegations set forth in paragraph “104” of the Complaint and respectfully refer all questions of law to the Court.

111. Deny the allegations set forth in paragraph “105” of the Complaint.

112. Deny the allegations set forth in paragraph “106” of the Complaint.

113. Deny the allegations set forth in paragraph “107” of the Complaint.

114. Deny the allegations set forth in paragraph “108” of the Complaint.

115. Deny the allegations set forth in paragraph “109” of the Complaint.

116. Deny the allegations set forth in paragraph “110” of the Complaint.

117. Deny the allegations set forth in paragraph “111” of the Complaint.

118. Deny the allegations set forth in paragraph “112” of the Complaint.

119. Deny the allegations set forth in paragraph “113” of the Complaint.

120. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “114” of the Complaint.

121. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “115” of the Complaint.

122. Deny the allegations set forth in paragraph “116” of the Complaint.

123. Deny the allegations set forth in paragraph “117” of the Complaint.

124. Deny the allegations set forth in paragraph “118” of the Complaint and respectfully refer all issues of law to the Court.

125. Deny the allegations set forth in paragraph “119” of the Complaint.

AS AND FOR AN ANSWER TO SECTION: NINTH CAUSE OF ACTION:
MALICIOUS PROSECUTION UNDER PENDENT JURISDICTION
AGAINST NASSAU

126. Answering paragraph “120” of the Complaint, Defendant repeats and reavers each and every response herein to paragraphs “1” through “119” of the Complaint as though fully set forth herein.

127. Deny the allegations set forth in paragraph “121” of the Complaint.
128. Deny the allegations set forth in paragraph “122” of the Complaint.
129. Deny the allegations set forth in paragraph “123” of the Complaint.
130. Deny the allegations set forth in paragraph “124” of the Complaint.
131. Deny the allegations set forth in paragraph “125” of the Complaint.
132. Deny the allegations set forth in paragraph “126” of the Complaint.
133. Deny the allegations set forth in paragraph “127” of the Complaint.
134. Deny the allegations set forth in paragraph “128” of the Complaint.
135. Deny the allegations set forth in paragraph “129” of the Complaint.
136. Deny the allegations set forth in paragraph “130” of the Complaint.
137. Deny the allegations set forth in paragraph “131” of the Complaint.
138. Deny the allegations set forth in paragraph “132” of the Complaint.
139. Deny the allegations set forth in paragraph “133” of the Complaint.
140. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “134” of the Complaint.
141. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph “135” of the Complaint.
142. Deny the allegations set forth in paragraph “136” of the Complaint.

143. Deny the allegations set forth in paragraph "137" of the Complaint.
144. Deny the allegations set forth in paragraph "138" of the Complaint.
145. Deny the allegations set forth in paragraph "139" of the Complaint.

AS AND FOR AN ANSWER TO SECTION: TENTH CAUSE OF ACTION
ABUSE OF PROCESS UNDER PENDENT JURISDICTION
AGAINST ALL DEFENDANTS

146. Answering paragraph "140" of the Complaint, Defendant repeats and reavers each and every response herein to paragraphs "1" through "139" of the Complaint as though fully set forth herein.
147. Deny the allegations set forth in paragraph "141" of the Complaint.
148. Deny the allegations set forth in paragraph "142" of the Complaint.
149. Deny the allegations set forth in paragraph "143" of the Complaint.
150. Deny the allegations set forth in paragraph "144" of the Complaint.
151. Deny the allegations set forth in paragraph "145" of the Complaint.
152. Deny the allegations set forth in paragraph "146" of the Complaint.
153. Deny the allegations set forth in paragraph "147" of the Complaint.
154. Deny the allegations set forth in paragraph "148" of the Complaint.
155. Deny the allegations set forth in paragraph "149" of the Complaint.
156. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "150" of the Complaint.
157. Deny the allegations set forth in paragraph "151" of the Complaint.
158. Deny the allegations set forth in paragraph "152" of the Complaint.
159. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "153" of the Complaint.

160. Deny knowledge or information sufficient to form a belief as to the truth of the allegations set forth in paragraph "154" of the Complaint.

161. Deny the allegations set forth in paragraph "155" of the Complaint.

162. Deny the allegations set forth in paragraph "156" of the Complaint.

163. Deny the allegations set forth in paragraph "157" of the Complaint.

AS AND FOR AN ANSWER TO SECTION: DAMAGES AND RELIEF

164. Deny the allegations set forth in the Wherefore Clause of the Complaint.

AFFIRMATIVE DEFENSES

165. Plaintiff has failed to state a cause of action against Defendant upon which relief can be granted.

166. Plaintiff has not complied with Section 50-e and/or 50-i and/or 50-h of the General Municipal Law of the State of New York.

167. Plaintiff has not complied with Section 52 of County Law of the State of New York.

168. Plaintiff has failed to mitigate her damages in this matter.

169. That at all times herein mentioned and mentioned in the Complaint, the peace officers, and/or agents, servants or employees of the Defendant County of Nassau, having anything to do with the Plaintiff were in the performance of their respective duties as peace officers, and/or agents, servants or employees of the Defendant County of Nassau; that all of the acts performed by each peace officer, and/or agent, servant or employee of the Defendant County of Nassau in connection with Plaintiff were performed in good faith, without malice, and with reasonable and proper cause in the ordinary course of their duties as such peace officers, and/or agents, servants or

employees of the Defendant County of Nassau, and as peace officers of the State of New York, and as required by them and each of them by reason of Plaintiff's conduct and Plaintiff's arrest and confinement.

170. Pursuant to the *Monell* doctrine, the County of Nassau cannot be held liable for the acts of its employees solely on the basis of respondeat superior in a 42 U.S.C. § 1983 action, and consequently the County cannot be liable for the acts or conduct of any individual defendant herein, as a matter of law.

171. The actions complained of were in full accord with the applicable law.

172. Plaintiff's constitutional and statutory rights have not been violated by the Defendant herein.

173. The County of Nassau, its agencies, departments and/or employees at all applicable times herein enjoyed a full, partial or qualified immunity from civil suit.

174. The alleged acts or omissions of the Defendant were not the proximate cause of any injuries or damages incurred by Plaintiff. Any injuries or damages incurred by Plaintiff were the result of her own actions, the actions of others and/or the superseding intervention of causes outside the control of the Defendant.

175. Punitive damages may not be recovered against the County of Nassau as a matter of law.

176. Plaintiff has failed to extinguish all available state remedies and, therefore is not entitled to institute the within claim.

177. Pursuant to the New York Civil Procedure Law and Rules ("CPLR") Section 1603, the Defendant assert the limitations contained in CPLR Sections 1601 and 1602 and all rights contained therein.

178. If the Plaintiff sustained the damages as alleged in the Complaint, such damages were sustained through and by virtue of the negligent, reckless and/or wrongful conduct, acts or omissions of a third party, without any negligence, wrongdoing acts or omissions on the part of Defendant contributing thereto.

179. If the Plaintiff sustained the damages as alleged in the Complaint, such damages were sustained solely through and by virtue of the negligent, reckless and/or wrongful conduct of the Plaintiff, without any negligence or wrongdoing on the part of the Defendant contributing thereto.

180. Should the Plaintiff recover damages as a result of a finding of liability in whole or in part as against Defendant, such recovery should be reduced and diminished in proportion to the degree of comparative negligence, recklessness and/or wrongdoing of Plaintiff in contributing to such damages.

WHEREFORE, Defendant demands judgment dismissing the Complaint as against Defendant, in its entirety, with prejudice, together with the costs and disbursements of this action, and such other relief as deemed just by the Court.

Dated: Mineola, New York
July 10, 2013

JOHN CIAMPOLI
Nassau County Attorney

BY: _____ /s/
Richard J. Femia
Deputy County Attorney
One West Street
Mineola, New York 11566
(516) 571-0709
Attorney for Defendant

TO: Michael J. Redenburg, ESQ. PC
Attorney for Plaintiff
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New York, New York 10038
Via ECF